

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into as of _____, 2002 (the “Effective Date”) by and among the Governor of the State of California, acting on behalf of the agencies, departments, subdivisions, boards, and commissions of the executive branch of the State of California; the California Electricity Oversight Board; the California Public Utilities Commission; the People of the State of California, by and through the Attorney General; Wellhead Power Panoche, LLC for itself and as successor to Wellhead Power, L.L.C., Wellhead Power Gates LLC, for itself and as assignee of an Original Contract from Wellhead Power, L.L.C., as assignor, and Fresno Cogeneration Partners, L.P.

1. Definitions.

The following terms have the following meanings:

- 1.1. “AG” means the People of the State of California, by and through the Attorney General Bill Lockyer.
- 1.2. “CAISO” means the California Independent System Operator Corporation.
- 1.3. “California Executive” means the Governor of the State of California, acting on behalf of the agencies, departments, subdivisions, boards, and commissions of the executive branch of the State of California, including, without limitation, CDWR. California Executive shall not include the CPUC or any other body created by the California Constitution.
- 1.4. “California State Releasing Parties” means the California Executive, the CPUC, the CEOB and the AG.
- 1.5. “Cal PX” means the California Power Exchange.
- 1.6. “CDWR” means the State of California Department of Water Resources, including without limitation, the California Energy Resources Scheduling Division.
- 1.7. “CEOB” means the California Electricity Oversight Board.
- 1.8. “CPUC” means the California Public Utilities Commission.
- 1.9. “Effective Date” has the meaning set forth in the first paragraph of this Settlement Agreement.
- 1.10. “FERC” means the Federal Energy Regulatory Commission.
- 1.11. “Fresno Cogeneration Partners, L.P.” means Fresno Cogeneration Partners, L.P.

1.12. “Just and Reasonable” means that term as used in Sections 205 and 206 of the Federal Power Act, 16 U.S.C. Sections 824d and 824e.

1.13. “Original Contracts” means (a) with respect to Wellhead Power Panoche, LLC, the Power Purchase Agreement (together with any exhibits, schedules, confirmation letters and any written supplements thereto) dated as of August 14, 2001 between Wellhead Power, L.L.C. and CDWR, after execution of which Power Purchase Agreement Wellhead Power, L.L.C. changed its name to Wellhead Power Panoche, LLC, (b) with respect to Wellhead Power Gates, LLC, the Power Purchase Agreement (together with any exhibits, schedules, confirmation letters and any written supplements thereto) dated as of August 14, 2001 between Wellhead Power, L.L.C. and CDWR, which was subsequently assigned by Wellhead Power, L.L.C. to Wellhead Power Gates, LLC, and (c) with respect to Fresno Cogeneration Partners, L.P., the Power Purchase Agreement (together with any exhibits, schedules, confirmation letters and any written supplements thereto) dated as of August 3, 2001 between Fresno Cogeneration Partners, L.P. and CDWR.

1.14. “Paragraph” means a numbered paragraph of this Settlement Agreement, unless otherwise noted, and all references to a paragraph shall include all subparts or subparagraphs of that paragraph.

1.15. “Parties” means the persons and entities listed in the first paragraph of this Settlement Agreement, collectively, and their respective successors and assigns. Each of the Parties may be individually referred to herein as a “Party.”

1.16. “Released Claims” means any and all of the claims set forth and described in Paragraphs 4.1 and 4.2.

1.17. “Renegotiated Contracts” means (a) with respect to Wellhead Power Panoche, LLC, the Amended and Restated Power Purchase Agreement (together with any exhibits, schedules, confirmation letters and any written supplements thereto) dated as of _____, 2002 between Wellhead Power Panoche, LLC and CDWR, (b) with respect to Wellhead Power Gates, LLC, the Amended and Restated Power Purchase Agreement (together with any exhibits, schedules, confirmation letters and any written supplements thereto) dated as of _____, 2002 between Wellhead Power Gates, LLC and CDWR, and (c) with respect to Fresno Cogeneration Partners, L.P., the Amended and Restated Power Purchase Agreement (together with any exhibits, schedules, confirmation letters and any written supplements thereto) dated as of _____, 2002 between Fresno Cogeneration Partners, L.P. and CDWR.

1.18. “Settlement Agreement” means this document.

1.19. “Wellhead Power Gates, LLC” means Wellhead Power Gates, LLC, for itself and as assignee of an Original Contract from Wellhead Power, L.L.C., as assignor.

1.20. “Wellhead Power Panoche, LLC” means Wellhead Power Panoche, LLC, for itself and as successor to Wellhead Power, L.L.C.

1.21. “Wellhead Power, L.L.C.” means Wellhead Power, L.L.C.

1.22. “Wellhead Contract Parties” means Wellhead Power Panoche, LLC, Wellhead Power Gates, LLC and Fresno Cogeneration Partners, L.P.

2. Recitals.

2.1 To help further the objective of assuring a reliable supply of electricity for California’s retail end-use consumers, in August, 2001, the CDWR entered into the Original Contracts with Wellhead Power, L.L.C. and Fresno Cogeneration Partners, L.P.

2.2. On February 25, 2002, and on February 26, 2002, the CPUC and the CEOB, respectively, filed separate complaints in Docket Nos. EL02-60-000 and EL02-62-000 under Section 206 of the Federal Power Act at the FERC alleging, among other things, that the terms and the rates under the Original Contracts are not Just and Reasonable or consistent with the public interest (the “CPUC Complaint” and the “CEOB Complaint,” respectively).

2.3 In March, 2002, certain of the Parties commenced discussions regarding renegotiation of the Original Contracts.

2.4. Pursuant to AB1X, the CDWR and the CPUC have executed the duly authorized Rate Agreement (the “Rate Agreement”) providing for the recovery by CDWR of its revenue requirements. The CPUC issued D. 02-02-051 on February 21, 2002, finding the Rate Agreement to be in the public interest and adopting it.

2.5. The Parties desire to resolve certain matters and to avoid any future claims relating to them, including issues relating to the effectiveness, enforceability, validity or justness and reasonableness of the Renegotiated Contracts, by way of compromise rather than by litigation. The Parties have agreed to resolve such matters and to ensure the ongoing effectiveness and validity of the Renegotiated Contracts on the terms and conditions set forth in this Settlement Agreement.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants contained herein, and the execution of the Renegotiated Contracts, it is hereby agreed between and among the Parties as follows:

3. Closing

3.1 Each Party shall execute six (6) copies of the Settlement Agreement. By 5:00 p.m. Pacific time on the Effective Date, each Party shall deliver or send by facsimile to each other Party, in Sacramento, California, one executed original or copy of this Settlement Agreement. Any party that sends an executed copy of this Settlement Agreement by facsimile shall also send the signed original by overnight mail for delivery the following business day.

3.2 CDWR and the Wellhead Contract Parties, shall execute four (4) copies of the Renegotiated Contracts. By 5:00 p.m. Pacific time on the Effective Date, CDWR and the Wellhead Contract Parties shall deliver executed copies of the Renegotiated Contracts to each of the California State Releasing Parties.

3.3 This Settlement Agreement, including the releases and other actions provided for herein, and the Renegotiated Contracts shall not become effective until and unless the CPUC has voted to adopt the Settlement Agreement. By 5:00 p.m. Pacific time on the Effective Date, the CPUC shall have considered and voted on approving the execution of this Settlement Agreement by the CPUC and communicated the outcome of the vote to the Wellhead Contract Parties.

3.4 By 5:00 p.m. Pacific time on the Effective Date, the California State Releasing Parties and the Wellhead Contract Parties shall have taken all actions necessary to authorize the execution and delivery of this Settlement Agreement and the Renegotiated Contracts.

3.5 This Settlement Agreement, including the releases and other actions provided for herein, and the Renegotiated Contracts shall not become effective until the requirements of Paragraphs 3.1 through 3.4 have been satisfied.

4. Mutual Release and Waiver.

4.1 The Original Contracts and the Renegotiated Contracts

Each of the California State Releasing Parties for itself hereby releases, acquits and forever discharges any and all claims of any nature whatsoever that it ever had, now has, or hereafter can, shall, or may have against the Wellhead Contract Parties based on, or arising out of, in whole or in part, (1) the Original Contracts, or (2) issues relating to the effectiveness, due authorization, validity, or enforceability of any of the obligations of any of the California State Releasing Parties under the Renegotiated Contracts or whether such obligations are Just and Reasonable. This release does not constitute a waiver by the California State Releasing Parties of the right to pursue remedies under the Renegotiated Contracts for acts and omissions from and after the Effective Date as provided therein, including but not limited to (1) claims of breach of an obligation created by the Renegotiated Contracts, (2) claims of failure to perform under the Renegotiated Contracts, and (3) disputes over the obligations created by, or the meaning of any terms used in, the Renegotiated Contracts. The release in this section 4.1 applies only to matters based on, or arising out of, in whole or in part, the generation, sale, purchase, ownership and/or transmission of electricity, natural gas and/or other utility or energy goods and services pursuant to the Original Contracts and the Renegotiated Contracts, and does not include matters of general applicability including, without limitation, environmental, permitting, health, safety and taxation.

The California State Releasing Parties waive all rights to challenge the validity of the Renegotiated Contracts or whether they are Just and Reasonable for and with respect to the entire term thereof, including any rights under Sections 205 and 206 of the Federal Power Act to request the FERC to revise the terms and conditions and the rates or services specified in the Renegotiated Contracts, and hereby agree to make no filings at the FERC or with any other state or federal agency, board, court or tribunal challenging the rates, terms and conditions of the Renegotiated Contracts as to whether they are Just and Reasonable or in the public interest. It is further agreed that, in the event of any future challenges to the Renegotiated Contracts for any other reason, the Parties will not dispute the applicability, as to the Parties, of the public interest standard as that term has been defined and interpreted under the Federal Power Act and the cases of United Gas Pipe Line Co. v. Mobile Gas Corp., 350 U.S. 332 (1956), and FPC v. Sierra Pacific Power Co., 350 U.S. 348 (1956), and subsequent cases. The California State Releasing

Parties and the Wellhead Contract Parties acknowledge and agree that each of the Renegotiated Contracts (but not any novation by means of a Replacement Agreement as defined in the Renegotiated Contracts), is a "Priority Long Term Power Contract" under the Rate Agreement.

4.2 Original Contracts, Renegotiated Contracts and FERC

The CEOB and CPUC hereby agree to withdraw with prejudice, as to Wellhead Power, L.L.C. and Fresno Cogeneration Partners, L.P., all actions or complaints set forth in the CPUC Complaint and the CEOB Complaint pertaining to the Wellhead Contract Parties pursuant to the procedures set forth in Section 4.6 herein.

This provision shall not restrict in any other way the ability of the CEOB or the CPUC to continue to participate in the CPUC Complaint or CEOB Complaint.

4.3 Each of the Wellhead Contract Parties for itself hereby releases, acquits and forever discharges any and all claims of any nature whatsoever that it ever had, now has, or hereafter can, shall, or may have against the California State Releasing Parties based on, or arising out of, in whole or in part, (1) the Original Contracts, or (2) issues relating to effectiveness, due authorization, validity, or enforceability of any of the obligations of the Wellhead Contract Parties under the Renegotiated Contracts or whether such obligations are Just and Reasonable. This release does not constitute a waiver by the Wellhead Contract Parties of the right to pursue remedies under the Renegotiated Contracts for acts and omissions from and after the Effective Date as provided therein, including but not limited to (1) claims of breach of an obligation created by the Renegotiated Contracts, (2) claims of failure to perform under the Renegotiated Contracts, and (3) disputes over the obligations created by, or the meaning of any terms used in, the Renegotiated Contracts. This release does not constitute a waiver of any claims by any of the Wellhead Contract Parties that actions of the California State Releasing Parties subsequent to the Effective Date may constitute an "impairment of contract," as used in the California and United States Constitution, with respect to the Renegotiated Contracts. The release in this section 4.3 applies only to matters based on, or arising out of, in whole or in part, the generation, sale, purchase, ownership and/or transmission of electricity, natural gas and/or other utility or energy goods and services pursuant to the Original Contracts and the Renegotiated Contracts, and does not include matters of general applicability including, without limitation, environmental, permitting, health, safety and taxation.

Each of the Wellhead Contract Parties hereby releases, acquits, and forever discharges the California State Releasing Parties from any and all claims arising on or before the Effective Date related to the claims described in Paragraphs 4.1 and 4.2.

4.4. Notwithstanding anything herein to the contrary, nothing in these Paragraphs 4.1, 4.2, or 4.3 shall constitute a limitation to, or waiver of, any right to enforce any obligation or pursue any remedy provided under this Settlement Agreement or the Renegotiated Contracts (including the enforcement of the releases provided by the Parties hereunder).

4.5 The California State Releasing Parties represent and agree that they will not enter into any subsequent settlement agreement or similar agreement with other persons or entities who generated, sold or marketed power in California settling claims similar to or arising out of

the same general facts and circumstances as the Released Claims directly or indirectly providing such other person or entity with third party beneficiary rights under or related to the matters covered by the Rate Agreement.

4.6 The CEOB and CPUC hereby agree to withdraw with prejudice, by means of filing a Notice of Partial Withdrawal, pursuant to 18 C.F.R. § 385.216(a), as to Wellhead Power, L.L.C. and Fresno Cogeneration Partners, L.P. only, all actions or complaints set forth in the CPUC Complaint and the CEOB Complaint pertaining to Wellhead Power, L.L.C. and Fresno Cogeneration Partners, L.P. within ten business days from the Effective Date. In filing to withdraw the CPUC Complaint and the CEOB Complaint as to Wellhead Power, L.L.C. and Fresno Cogeneration Partners, L.P., the CEOB and the CPUC shall each advise the FERC that resolution has been reached between it and the Wellhead Contract Parties concerning such actions and complaints. The contents of each such filing shall be consistent with the terms and conditions of this Settlement Agreement.

The Parties will cooperate and assist each other in good faith in the preparation and filing of such partial withdrawal in any and all proceedings arising out of, or related to, the request for partial withdrawal, including but not limited to acting in good faith to take all necessary actions to effectuate Federal Energy Regulatory Commission acceptance of the withdrawal and associated dismissal of the portions of the complaints and claims, and effectuation of the releases as contemplated in this Paragraph.

4.7. Each of the California State Releasing Parties and the Wellhead Contract Parties each expressly waives the benefits of any statutory provision or common law rule that provides, in sum or substance, that a release does not extend to claims which the party does not know or suspect to exist in its favor at the time of executing the release, which if known by it, would have materially affected its settlement with the other party. In particular, but without limitation, each of the California State Releasing Parties and the Wellhead Contract Parties expressly waives the provisions of California Civil Code section 1542, which statute reads:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Each of the California State Releasing Parties and the Wellhead Contract Parties may hereafter discover facts other than or different from those that it knows or believes to be true with respect to the claims released pursuant to the provisions of this Settlement Agreement, but each of the California State Releasing Parties and the Wellhead Contract Parties hereby expressly waives and fully, finally and forever settles and releases any known or unknown, suspected or unsuspected, asserted or unasserted, contingent or noncontingent claim with respect to the Released Claims, and without regard to the subsequent discovery or existence of such different or additional facts, except, with respect to the AG, criminal claims and claims of willful fraud.

4.8. The California State Releasing Parties and the Wellhead Contract Parties each expressly represents and warrants that it has not sold, assigned, transferred, or encumbered, or

otherwise disposed of, in whole or in part, voluntarily or involuntarily, any claim released pursuant to this Settlement Agreement.

4.9. This Settlement Agreement may be pleaded as a full and complete defense to any claim that may be instituted, prosecuted or attempted in breach of this Settlement Agreement. The Parties further agree that their respective duties and obligations hereunder may be specifically enforced through an action seeking equitable relief or a petition for writ of mandamus by the Party or Parties for whose benefit such duty or obligation is to be performed, but no breach of any duty or obligation by any Party hereunder shall entitle any other Party to rescind or terminate this Settlement Agreement or the Renegotiated Contracts. In any such action, and in any action to enforce the provisions of the Settlement Agreement, the prevailing party shall recover its reasonable attorneys' fees and costs.

4.10 Each of the Wellhead Contract Parties agrees that it is subject to, and will comply in all material respects with, applicable rate filing requirements under the Federal Power Act and regulations thereunder, as those requirements may be interpreted, reviewed and revised by the FERC or a federal court from time to time.

4.11. The California State Releasing Parties and the Wellhead Contract Parties expressly understand that both direct and indirect breaches of the provisions of this Settlement Agreement are proscribed. Therefore, the California State Releasing Parties and the Wellhead Contract Parties covenant that each will not institute or prosecute, against the other, any action or other proceeding based in whole or in part upon any claims released by this Settlement Agreement; provided, however, the Parties expressly acknowledge that the CPUC Complaint and CEOB Complaint are continuing with respect to entities other than Wellhead Power, L.L.C. and Fresno Cogeneration Partners, L.P. and this Settlement Agreement is not intended to impair in any way the California State Releasing Parties' participation in those pending actions.

4.12. The Parties hereby waive and release any and all claims for attorneys' fees or costs, statutory or otherwise, related in any way to disputes pre-dating this Settlement Agreement or related to the Parties' entry into this Settlement Agreement.

4.13. The California State Releasing Parties hereby agree, represent, and warrant they will not encourage or take any action not otherwise required by law to assist any individual, entity, organization, agency, department, board, subdivision, or commission not bound hereunder or a party hereto to bring or maintain a claim in the nature of the Released Claims.

5. General Provisions.

5.1. In entering and making this Settlement Agreement, the Parties assume the risk of any mistake of fact or law. If the Parties, or any of them, should later discover that any fact they relied upon in entering this Settlement Agreement is not true, or that their understanding of the facts or law was incorrect, the Parties shall not be entitled to seek rescission of this Settlement Agreement by reason thereof, except in the case of willful fraud. Subject to these limitations this Settlement Agreement is intended to be final and binding upon the Parties regardless of any mistake of fact or law.

5.2. This Settlement Agreement shall be binding upon and for the benefit of any of the Parties and their successors and assigns. Nothing in this Settlement Agreement shall be construed or interpreted to impart any rights or obligations to any third party (other than a permitted successor or assignee bound to this Settlement Agreement).

5.3. Neither the provision of consideration in the form of the mutual covenants contained herein, nor the performance of any such covenants contained herein, nor anything contained or incorporated herein shall be deemed, nor shall the negotiations, execution and performance of this Settlement Agreement constitute, any admission or concession of liability or wrongdoing on the part of any Party; or any other form of admission with respect to any matter, thing or dispute whatsoever. Any such liability or wrongdoing is expressly denied.

5.4. Each Party represents and warrants to the other Parties that (1) it has the full power and authority to enter into this Settlement Agreement and to perform all transactions, duties and obligations herein set forth, (2) it has taken all necessary actions duly and validly to authorize the execution and delivery of this Settlement Agreement and the other documents and agreements provided for herein to be executed and delivered by such Party in accordance with applicable law, (3) it has duly and validly executed and delivered this Settlement Agreement and the other documents and agreements provided for herein to be executed and delivered by such Party, and (4) this Settlement Agreement and the other documents and agreements provided for herein to be executed and delivered by such Party constitute the legal, valid and binding obligations of such Party, enforceable against such Party in accordance with their respective terms.

5.5. Each Party warrants the following: (1) it is represented by competent counsel with respect to this Settlement Agreement and all matters covered by it; (2) it has been fully advised by said counsel with respect to its rights and obligations and with respect to the execution of this Settlement Agreement; and (3) it authorizes and directs its respective attorneys to have such papers executed and to take such other action as is necessary and appropriate to effectuate the terms of this Settlement Agreement.

5.6. Each Party warrants that no promise, inducement or agreement not expressed herein has been made in connection with this Settlement Agreement. To the extent that it was deemed necessary and desirable by a Party, each such Party warrants that it has received appropriate, adequate, and competent technical and economic advice. Each Party warrants that it has not relied on any other Party for advice or guidance concerning the technical or economic implications or consequences of the Renegotiated Contracts or this Settlement Agreement. This Settlement Agreement constitutes the entire agreement between the Parties and supersedes and replaces all prior negotiations or proposed agreements, written or oral, with respect to the subject matter thereof.

5.7. This Settlement Agreement may not be altered, amended, modified or otherwise changed in any respect whatsoever except by a writing duly executed by an authorized representative of each of the Parties.

5.8. The language of this Settlement Agreement shall be construed as a whole, according to its fair meaning and intent, and not strictly for or against any Party, regardless

of who drafted or was principally responsible for drafting the Settlement Agreement or any specific terms or conditions hereof. This Settlement Agreement shall be deemed to have been drafted by all Parties, and no Party shall urge otherwise.

5.9. The headings in this Settlement Agreement are for convenience only. They in no way limit, alter or affect the meaning of this Settlement Agreement.

5.10. This Settlement Agreement shall be construed and enforced pursuant to the laws of the State of California.

5.11. Should any provision of this Settlement Agreement be held illegal, such illegality shall not invalidate the whole of this Settlement Agreement; instead, the Parties shall use their best efforts to reform the Settlement Agreement in order to give effect to the original intention of the Parties in all material respects.

5.12. This Settlement Agreement may be executed in multiple original and/or facsimile counterparts, each of which is equally admissible in evidence and shall be deemed to be one and the same instrument. This Settlement Agreement shall not take effect until each Party has signed a counterpart.

5.13. Each Party represents and warrants that it has the full power and authority to enter into this Settlement Agreement and to perform all transactions, duties and obligations herein set forth. Each signatory to this Settlement Agreement who signs on behalf of a Party represents and warrants that he or she has the authority to sign on behalf of that Party.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement as of Effective Date.

The Governor of the State of California

By: _____

Barry Goode, Secretary of Legal Affairs

Attorney for the Governor of the State of California

The California Department of Water Resources

By: _____

Name: _____

Title: _____

The California Electricity Oversight Board

By: _____

Name: _____

Title: _____

The California Public Utilities Commission

By: _____

Name: _____

Title: _____

Attorney General of the State of California

By: _____

Name: _____

Title: _____

Wellhead Power Panoche, LLC, for itself and as
successor to Wellhead Power, L.L.C.

By: _____

Name: _____

Title: _____

Wellhead Power Gates, LLC for itself and as
assignee of an Original Contract from Wellhead
Power, L.L.C., as assignor

By: _____

Name: _____

Title: _____

Fresno Cogeneration Partners, L.P.

By: _____

Name: _____

Title: _____